IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CASE NO.: **CWP No.2377 of 1999**

DATE OF DECISION: January 11, 2007

J.C. SHARMA ...PETITIONER

VERSUS

THE STATE OF HARYANA ETC. ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE ASHUTOSH MOHUNTA.

PRESENT: MR. GIRISH AGNIHOTRI, ADVOCATE FOR THE PETITIONER.

MR. RAJEEV KWATRA, SR.DAG, HARYANA.

ASHUTOSH MOHUNTA, J. (ORAL)

The petitioner has prayed that a writ in the nature of mandamus be issued to the respondents directing them to release all the retiral benefits including commutation of pension, leave encashment and gratuity, etc. The petitioner was initially appointed as Junior Engineer in the Department of Irrigation on 4.5.1960. He retired as Xen. on 30.4.1998, after putting in nearly 38 years of service. Although the petitioner retired on 30.4.1998, but his entire service benefits were not released to him on the ground that a show cause notice had been issued to him way back on 18.8.1981 i.e., 17 years prior to his retirement.

Counsel for the petitioner contends that on the date when the petitioner retired, there was no inquiry pending against the petitioner for any major punishment. He further submits that even the show cause notice which had been issued to the petitioner on 18.8.1981, had not been decided,

although 17 years had elapsed. Learned counsel relies on Rule 2.2 (b) of the Punjab Civil Service Rules, Vol.-II which is reproduced as under:-

> "*(b) The Government further reserve to themselves the right of withholding or with-drawing a pension or any part of it, whether permanently or for a specific period and the rights of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if, in a departmental or judicial proceeding, the pensioner is found guilty of grave mis-conduct, including service rendered upon re-employment after retirement:*
>
> *Provided that-*
>
> *(1) Such departmental proceedings, if instituted while the officer was in service whether before his retirement or during his reemployment, shall after the final retirement of the officer, be deemed to be a proceeding under this article and shall be continued and concluded by the authority by which it was commenced the same manner as if the officer has continued in service;*
>
> *(2) Such departmental proceedings, if not instituted while the officer was in service whether before his retirement or during his re-employment.*
>
> *i) shall not be instituted save with the sanction of the government;*

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the officer during his service."

According to learned counsel, the petitioner was not found to be guilty of any grave misconduct or negligence during his period of service, therefore, the pensionary benefits could not have been withheld.

Learned counsel for the State contends that as a show cause notice was pending against the petitioner, therefore, a part of the retiral benefits were rightly withheld.

A perusal of Rule 2.2. (b) of the Punjab Civil Service Rules, Vol.-II clearly shows that the retiral benefits could only have been withheld if the petitioner was found to be guilty of grave misconduct or negligence during his period of service. This was not the case. The show cause notice issued to the petitioner was in the year 1981 whereas, the petitioner retired on 30.4.1998. The show cause notice did not culminate into any major punishment. Thus, withholding of the retiral benefits of the petitioner by the respondents was absolutely illegal.

In view of the above, the writ petition is allowed and the respondents are directed to release the pensionary benefits including, commutation of pension, leave encashment and gratuity to the petitioner within a period of three months from the date of receipt of certified copy of this order. The respondents shall also pay interest at the rate of 6% p.a. on the amount of retiral benefits withheld by them which was Rs.95857/-.

January 11, 2007
Gulati

(ASHUTOSH MOHUNTA)
JUDGE